

VZCZCXR08270

PP RUEHAO RUEHGA RUEHGD RUEHGR RUEHHA RUEHHO RUEHMC RUEHMT

RUEHNG RUEHNL RUEHQU RUEHRD RUEHRC RUEHRS RUEHTM RUEHVC

DE RUEHCV #0271/01 0621828

ZNR UUUUU ZZH

P 031828Z MAR 09

FM AMEMBASSY CARACAS

TO RUEHC/SECSTATE WASHDC PRIORITY 2678

INFO RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS

RUCPDOC/DEPT OF COMMERCE

UNCLAS SECTION 01 OF 02 CARACAS 000271

SENSITIVE

SIPDIS

STATE FOR EEB/IPE

DEPT PLS PASS TO USTR

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#)

SUBJECT: 2009 SPECIAL 301 RECOMMENDATION: KEEP VENEZUELA
ON PRIORITY WATCH LIST

REF: A. STATE 8410

[¶](#)B. 08 CARACAS 1427

[¶](#)C. 07 CARACAS 366

[¶](#)D. 06 CARACAS 486

[¶](#)1. (SBU) Summary: The Government of the Bolivarian Republic of Venezuela (GBRV) continues to chip away at protection of intellectual property rights. In 2008, the GBRV resurrected a 50 year old law disallowing the patenting of medicines and food. Enforcement remains a problem as the police agency primarily responsible for IPR is defunct. SAPI, the agency that oversees IPR and issues patents, has not issued a single patent since 2004. Based on the GBRV's aversion to IPR, weak enforcement, and possible legal changes to further weaken IPR protections, Post recommends that Venezuela remain on the Special 301 Priority Watch List for 2009. End Summary.

Weakened Legal Protection of IPR

[¶](#)2. (SBU) Until Venezuela's April 2006 withdrawal from the Andean Community, Venezuela had incorporated over 650 legal decisions from the Andean Community into domestic law, including Decision 486, which provided the legal framework for patent and trademark protections. In September 2008, SAPI, the Autonomous Intellectual Property Service (the country's primary IPR authority), announced in a press release that it had resurrected the Ley de Propiedad Industrial de 1955 (the 1955 law). The 1955 law states that drinks, foodstuffs, drugs of any kind and other chemical reactions and combinations may not be patented.

[¶](#)3. (SBU) Creative works are protected pursuant to the Copyright Law of 1993, Decision 351 of the Cartagena Agreement, the Bern Convention and the Universal Copyright Convention. Venezuelan law protects the rights of authors of creative intellectual works. Currently, copyright protection is valid for the life of the author, plus 60 years. However, the pharmaceutical and recording industries continue to be concerned that Chavez may sign into law a copyright bill drafted in 2004. The draft legislation would violate many of Venezuela's bilateral and multilateral IPR treaty obligations, reduce the protection period for copyrights from 60 to 50 years and would allow the GBRV to appropriate artistic rights for the public sector. Venezuela has also not deposited the instruments of ratification for the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, and has not sent an official delegation to WIPO committee meetings since 2004.

[¶](#)4. (SBU) Trademarks are registered with SAPI, granted for ten years and may be renewed for successive ten-year periods. Trademark rights can be enforced through civil,

administrative and criminal actions. As a result of civil action, a registered trademark owner may be entitled to relief, which is at the discretion of the judge. However, the registered trademark owner cannot prohibit a third party from using a trademark in connection with products that are provided by the trademark owner. A trademark may be canceled at the request of any interested third party if it has not been used in Venezuela for three years.

The Pharmaceutical Industry

15. (SBU) Eduardo Saman, the former Director of SAPI and current Director of the Venezuelan consumer protection agency, the Institute for the Defense of People's Access to Goods and Services (INDEPABIS), has argued that trademarks and patents hindering the fabrication of generic medicines or the reproduction of technology should be considered monopolies, which are prohibited under the Venezuelan constitution. Despite his move to INDEPABIS, Saman continues to carry weight on IPR issues. SAPI has not issued a patent for an imported pharmaceutical product since 2003, and has not issued a patent in any sector since 2004. Since 2002, the GBRV has failed to protect pharmaceutical testing and other confidential data for product submissions that have not yet received patent protection. As the GBRV does not link patents and sanitary registrations, counterfeiters can receive sanitary registration approval in the absence of a patent -- equivalent to marketing approval for a counterfeit product.

CARACAS 00000271 002 OF 002

Recorded Media and Software

16. (SBU) In 2004, the GBRV passed legislation that required the use of open source software throughout the public sector. While not a violation of IPR in and of itself, the software industry has concerns about a lack of transparency in its implementation and favoritism shown to certain vendors. The piracy rate for business software in 2008 was 87 percent, according to the Business Software Alliance. The market for legitimate CDs and DVDs continues to decline. As Venezuela imports a high number of virgin discs, the country may be a distribution source and a production center for counterfeit products. The National Film Law, passed in August 2005, requires distributors to locally copy a percentage of the movies they distribute and to register all films, leading to unauthorized release of confidential information and piracy.

Other IPR BARRIERS

17. (SBU) Another barrier to IPR in Venezuela is foreign currency controls. The Currency Exchange Administration (CADIVI), the agency that administers the GBRV's currency controls, may block access to foreign exchange for companies attempting to pay royalties, patent license fees, and franchise fees. (To receive US dollars at the official exchange rate for transactions such as dividend repatriation and operating costs, a company must obtain CADIVI approval. There are no reliable figures for how much money US companies as a whole have requested from CADIVI.) Post has received reports of CADIVI not acting on foreign currency exchange requests due to "improper paperwork". While denial of currency requests may not be related to IPR enforcement, not acting on them prevents businesses from complying with IPR laws.

IPR Enforcement

¶8. (SBU) The enforcement situation in Venezuela remains the same as last year. An ongoing lack of political will, lengthy legal processes, unprepared judges, and a lack of resources for investigation and prosecution create effective barriers to IPR enforcement. A special prosecutor with one assistant is responsible for IPR issues in Venezuela and investigations are severely backlogged. Under current Venezuelan law, IPR enforcement actions can only take place as a result of a complaint by the rights holder and the complainant is responsible for the storage cost of the illicit goods. Furthermore, only violators operating at a fixed location are prosecutable, effectively barring prosecution of street vendors.

¶9. (SBU) With its "zero tax evasion" and "zero contraband" programs, SENIAT, the customs and tax enforcement agency, has undertaken IPR enforcement. Despite these efforts, SENIAT fired its lone IPR advocate in 2007. Throughout 2008, however, SENIAT published reports that it had destroyed pirated goods. COMANPI, the Venezuelan copyright and trademark enforcement branch of the police, is also charged with IPR enforcement and maintains a small staff of permanent investigators. Local IPR contacts have said that COMANPI, an agency known for its lack of personnel, limited budget, and inadequate storage facilities for seized goods, no longer has a functioning headquarters.

Comment

¶10. (SBU) The protection of intellectual property rights in Venezuela continues to deteriorate. The legal regime is increasingly tenuous, with a reversion to a 1955 law covering medicinal and food patents in 2008. Enforcement continues to remain weak and high ranking officials continue to express their disdain for IPR protection. Few resources are dedicated to investigating and prosecuting IPR crimes. Post recommends keeping Venezuela on the Special 301 Priority Watch List for 2009.

GENNATIEMPO